UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

RISTEEN MASTERS and RONALD MASTERS,	)	
Plaintiffs	)	
v.	)	Civil No. 99-37-B
ALLSTATE INSURANCE COMPANY,	)	
Defendant	)	

MEMORANDUM AND ORDER ON PLAINTIFFS' MOTION FOR ATTORNEYS FEES AND INTEREST PURSUANT TO 24-A M.R.S.A. § 2436

On November 18, 1999, this Court entered Judgment for Plaintiffs on Plaintiffs' underinsured motorist claim and on Plaintiffs' claim that Defendant violated Maine's Late Payment Statute. 24-A M.R.S.A. § 2436. Plaintiffs now move for interest and reasonable attorneys fees under section 2436(3) & (4).[1] For reasons

[1] Section 2436(3)&(4) reads:

3. If an insurer fails to pay an undisputed claim or any undisputed part of the claim when due, the amount of the overdue claim or part of the claim bears interest at the rate of 1 1/2% per month after the due date.

4. A reasonable attorney's fee for advising and representing a claimant on an overdue claim or action for an overdue claim must be paid by the insurer if overdue benefits are recovered in an action against the insurer or if overdue benefits are paid after receipt of notice of the attorney's position.

stated below, the Court GRANTS Plaintiffs' motion in part and DENIES Plaintiffs' motion in part.

Plaintiffs' counsel asks this Court to award fees in the amount of $36,353.80. Lead counsel billed his own time at $165 an hour for 172.20 hours; an associate at $110 an hour for 11.40 hours; a paralegal at $65 an hour for 82.35 hours; and a summer associate at $55 an hour at 14.85 hours. These legal services plus other disbursements result in the total listed above.

Defendant opposes this amount claiming that the request is excessive for two reasons. First, Defendant contends that the reasonableness of the fee should be determined by the contingency agreement between the Plaintiffs and their counsel. Under the agreement counsel is entitled to one-third of the amount awarded by the jury. Here, the jury awarded $10,000, therefore, Defendant argues, the fees sought by Plaintiffs' counsel cannot exceed $3,333.33.[2] Second, Defendant contends that the amount requested is more than three-and-a-half times the award and is therefore unreasonable.

The Court first notes that the Maine Law Court has not set forth any special rule for determining reasonable attorney fees under § 2436(4). Instead, the Law

[2] Plaintiffs actual award by the jury was $110,000. However, because Plaintiffs received $100,000 from a tortfeasor's insurer, judgment was reduced by that amount.

Court has set forth a general standard with the goal being "to make an award that is fair and equitable under the circumstances." *Rosen v. Rosen*, 651 A.2d 335, 336 (Me. 1994). The Law Court has listed several factors that may be relevant. *Poussard v. Commercial Credit Plain*, 479 F.2d 881 (Me. 1984). Those factors include:

> (1) the time and labor required; (2) the novelty and difficulty of the question presented; (3) the skill required to perform the legal services; (4) the preclusion of other employment by the attorneys due to acceptance of the case; (5) the customary fee in the community; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; (12) awards in similar cases."

Poussard, 479 A.2d at 884.

The court should apply those factors in a manner that awards fees in a fair and just manner.

The Court's analysis begins by examining whether the amount of time spent and the hourly rate charged, often referred to as the lodestar, is reasonable. *Lipsett v. Bianco*, 975 F.2d 934, 937 (1st Cir. 1992). The other factors mentioned above, including the two mentioned by Defendant, are then used to determine whether the Court should adjust the requested fees. *Blanchard v. Bergeron*, 489 U.S. 87, 93 (1989). Plaintiffs bear the burden in establishing that the rates requested are reasonable.

The Court is satisfied that two hundred and eighty hours billed by Plaintiffs' counsel is by no means excessive in preparing a case like this one from its inception through trial, nor are the hourly rates charged by the lead counsel, associate, paralegal and summer associate outside the rates customarily charged in this area. Further, many of the other factors mentioned above - the experience and reputation of the attorneys, the skill required to perform the case, the novelty and difficulty of the issues presented - do not lead the court to deviate from the requested amount.

This leaves the Court with the two factors mentioned by Defendant - the contingent fee, and the amount involved and results obtained. The Court applies little weight to the fact that the fee was contingent and is not bound by the amount contracted to between Plaintiffs and their counsel. *See Blanchard* , 489 U.S. at 93. The amount requested compared to the result obtained is more problematic. When the amount of fees extend far beyond the results obtained, the award should be carefully scrutinized. *Poussard*, 479 A.2d at 885 Here, the Court is satisfied that the amount requested is not so far beyond the award as to be considered unreasonable. Plaintiffs' received a jury verdict of $110,000 that was reduced to $10,000 by virtue of the prior payment and later reduced to $6,666.67 by agreement between the parties. Plaintiffs' counsel fees are about a third of the judgment handed down by the jury prior to offset. Even if the Court determined the reasonableness of the fees from the

Defendant's perspective[3] - the $10,000 jury verdict - the Court is satisfied that the requested fees are not "'so high as to constitute an unmistakable windfall.'" *Poussard*, 479 A.2d at 885 (citing *Hensley v. Eckerhardt*, 461 U.S. 424, 454 (1983) (Brennan, J. concurring/dissenting opinion)).

Defendant next asks the Court to reduce those fees that relate to Plaintiffs unsuccessful attempt to recover for loss of consortium in Count II. Indeed, the degree of success obtained by the party seeking the fees is a critical factor when determining the reasonableness of the fees. *Poussard*, 479 A.2d at 885. This Court has previously addressed how to analyze a request for attorney fees when the party requesting the fees was successful on the fee-shifting statute but unsuccessful on other claims. The Court must determine "whether the claims on which the party lost were unrelated to the successful claims, or whether they derived from a common core of facts or related legal theories." *Wilcox v. Stratton Lumber, Inc.* 921 F. Supp. 837 (D. Me. 1996). When "the successful claim and unsuccessful claims are closely related the Court may either identify specific hours that should be eliminated, or simply reduce the award to account for the limited success." *Id.*

[3] Plaintiffs' counsel contends that his fee was based on $88,671.81, the amount recovered by Plaintiffs after the tortfeasor's insurer paid Ms. Master's property damage claim. *See* Supplemental Affidavit of Edward W. Gould, Esq. at ¶2.

Here, the Court is satisfied that Plaintiffs' loss of consortium claim derived from the same core of facts as their underinsured claim and late payment claim, namely Plaintiff's injuries sustained from a motor vehicle accident. Because the causes of action are so interrelated it is impossible to distinguish what amount of time counsel spent on the loss of consortium claim as opposed to the other claims. Defendant points to several entries that it claims relate to services related the loss of consortium claim. However, the Court is unwilling to come to that conclusion because the entries made refer to contacts with hospitals and reviewing medical records that could relate to Plaintiffs' underinsured claim.

This leaves the Court with the option of reducing the award to account for the unsuccessful claim. The Court concludes that a 10% reduction in the requested attorney fees is fair in light of the fact that the loss of consortium claim likely did not involve extensive preparation because it was in many ways inextricably related to the underinsured claim and standing alone requires little factual or legal research.

Plaintiffs next ask the Court to impose one-and-a half percent interest per month on the amount of the overdue claim after the due date pursuant to 24-A M.R.S.A. § 2436(3). Defendant did not object to this request in its Response.

Accordingly, Plaintiffs are awarded interest on their net recovery, $6,666.67, at the rate of one-and-a-half percent interest a month from September 29, 1998.[4]

Conclusion

For the reasons stated Plaintiffs' motion is GRANTED in part and DENIED in part. The Court awards Plaintiffs' the following amounts:

Attorney fees : $32,718.42 ($36,353.80 - $3,635.38 (10%)).

Interest: Imposed on the net recovery, $6,666.67, at the rate of 1 ½ % per month from September 29, 1998.

SO ORDERED.

Eugene W. Beaulieu
U.S. Magistrate Judge

Dated on: January 13, 2000

[4] Plaintiffs ask the Court to award the interest from September 13, 1998 because they made their claim on August 12, 1998 and Defendant did not respond in thirty days as mandated by the statute. However, Defendant did ask Plaintiff for additional information related to the claim on August 28, 1998 and Plaintiffs' attorney faxed Defendant the requested information that same day. Under the statute, Defendant had thirty days from the time it requested the additional information to dispute or agree to the claim. Therefore, the proper date to begin calculating the interest is September 29, 1998, thirty-one days after Defendant requested additional information.